JOHN FREDERICKS, JR.
v.
ACTING ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 93-29-A Decided July 27, 1993

Appeal from the disbursement of funds from an Individual Indian Money account to pay lease rentals allegedly due to the Three Affiliated Tribes of the Fort Berthold Reservation.

Dismissed.

1. Indians: Financial Matters: Individual Indian Money Accounts

Under 25 CFR 115.9 (b) an individual must be informed that a hold has been placed on funds in his or her Individual Indian Money account and given the right to request a hearing. However, the regulation further provides that, if the individual fails to request a hearing, he or she is deemed to consent to the limitation on and/or disbursement of funds from the account as set forth in the notice.

APPEARANCES: John Fredericks, Jr., pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant John Fredericks, Jr., seeks review of an October 19, 1992, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the disbursement of $2,223.79 from appellant's Individual Indian Money (IIM) account to pay lease rentals allegedly due to the Three Affiliated Tribes of the Fort Berthold Reservation (Tribe). For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal as an untimely attempt to appeal a 1987 decision and/or a 1984 decision.

Background

Appellant, a member of the Tribe, has leased both tribal and individually allotted lands on the reservation since at least 1978. By certified letter dated March 5, 1987, appellant was informed by the Superintendent, Fort Berthold Agency, BIA (Superintendent), that a claim in the amount of $2,480.40 had been filed against his IIM account for alleged delinquent lease rentals on Allotments T704A, Lease No. 18031-85, and T907A, Lease

No. 18023-85. Both allotments are wholly owned by the Tribe. 1/ The letter informed appellant of his right to request a hearing in regard to the claim. Other information in the administrative record clarifies that the claim was for 1983, 1984, and 1985 rentals on the two tribal allotments. There is no indication in the administrative record, or in any subsequent submissions by appellant, that he requested a hearing or in any other way officially objected to the claim. It appears that no further action was taken at that time to transfer the funds out of appellant's IIM account.

Sometime during April 1992, appellant met with the Superintendent and other Agency officials, and requested the disbursement of funds in his IIM account. When he was informed there was a hold on his account, appellant presented a copy of his special deposit account ledger, dated September 6, 1984, which showed an entry marked "Lease payment 704A" debiting his IIM account for $1,884.56. Appellant contended that this payment should have been applied to the rentals for the two leases.

The Superintendent researched the hold on appellant's IIM account. In a response dated August 4, 1992, the Superintendent stated:

> Currently, a hold is in place on your IIM account for $2,480.00 [sic]. This is for 1983, 1984 and 1985 Lease Rental and Penalty Interest on Lease No. 18031-85, Allotment T704A and Lease No. 18023-85, Allotment 907A.
>
> In a meeting with [Agency officials], you provided a copy of your special deposit account ledger. You showed us an entry dated September 06, 1984. The entry read "Lease payment 704A", and debits your account $1,884.56.
>
> It is your contention that this entry should be applied as payment to the hold on your IIM. We have researched this and find that the Debit entry on your special deposit account applies to the 1980 lease rental for allotment 704A, Lease No. 17151.
>
> Consequently, as of this date, we are transferring the amount of $2,480.00 into the [Tribe's] Land Revenue account.

Appellant wrote to the Superintendent on August 31, 1992, disputing the decision to transfer funds from his IIM account to the Tribe. The Superintendent treated the letter as an appeal from the August 4, 1992, decision,

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1/ Appellant had previously been informed of the allegation that the rentals on the two leases had not been paid by letters dated Mar. 28, 1985; Dec. 2, 1985; and Apr. 3, 1986; and a bill for collection dated Sept. 10, 1986. The Apr. 3, 1986, letter also informed appellant that the Tribe had been notified that the rentals had not been paid and had directed BIA to cancel the leases. The letter explained that although the leases had expired by their own terms on Dec. 31, 1985, appellant was still responsible for paying the delinquent rentals.

and forwarded the letter and administrative record to the Area Director. On October 19, 1992, the Area Director responded to appellant:

> By correspondence dated June 27, 1980, [the Agency] advised you that the lease rental for Lease No. 17151-82 had not been paid. The record does not show that you had paid the 1980 rental. When detected by the Agency that the 1980 rental had not been paid, the lease was already expired. It would have been too late to contact the bonding [company] for payment. Also, because the Agency did not invoke payment through the bonding company, this does not forgive you from paying the unpaid 1980 rental. Therefore, the payment of September 6, 1984 for $1,884.56 ($1,652 + interest) was applied towards satisfying the unpaid 1980 rental. The $339.23 payment was applied towards haycutting for the year 1984. The funds were then paid to the Three Affiliated Tribes, owners of the land. [2/]
>
> Payments made to [BIA], as provided in the lease contracts, are receipted, showing the Check or Money Order number, the amount, and issuing institution. The Agency has no record of you paying the 1980 lease rental nor have you provided proof that the rental had been paid.

Appellant appealed to the Board. His notice of appeal, consisting of one page, states:

> Please be advised that I am appealing the Acting Area Director's action turning down my appeal of [the Superintendent's decision] paying out $2,223.79 from my IIM account. * * *
>
> I am appealing this action as follows:
>
> 1. I put the Superintendent on notice that as Superintendent, I wanted him to protect my IIM Account to the fullest extent of the law.
>
> 2. That the pay, for the lease in 1980, in 1992, has long extended the statutes of limitation.

2/ In addition to appellant's special deposit account ledger, the administrative record contains two journal vouchers dated Sept. 6, 1984. One voucher shows a debit to appellant's special deposit account in the amount of $1,884.56, with a corresponding credit to the Tribe's land Revenue Fund. The entry is headed "Distribution of lease payment on Allot. 704T plus interest." The second voucher shows a debit to appellant's special deposit account in the amount of $339.23, also with a corresponding credit to the Tribe's Land Revenue Fund. This entry is headed "Distribution of Hay cutting on Range Unit 109 for 1979 season plus interest: NSW4 Sec. 29-147-90." The total of these two entries, $2,223.9, is the amount in controversy in this appeal.

3. The 1980 lease referred to in [the Area Director's] letter dated October 19, 1992 is shown as being paid in my IIM Account ledger on November 20, 1980 a payment of $1,500 shows payment for 1980 cash rent.

4. The accounting is highly inadequate. No proof of debt.

5. Letter dated November 7, 1989 from Hans Walker, Attorney. The funds that the BIA seeks to incumber are derived from lands held in trust for myself under the General Allotment Act of 1887, 25 [U.S.C.] §§ 331 et seq. subject to no charge or incumbrance whatsoever.

Income derived from that land, then, is subject to the same protection as the land and the reason I put the Superintendent * * * on notice that I expected him to protect my rights according to federal law.

Neither appellant nor the Area Director filed a brief.

Discussion and Conclusions

Regulations governing IIM accounts are set forth in 25 CFR Part 115. Section 115.9 provides: "Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies or to the tribe of which the individual is a member, unless such payments are prohibited by acts of Congress * * *." This regulation is based in part on 25 U.S.C. § 410 (1988), which provides:

No money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period * * * except with the approval and consent of the Secretary of the Interior.

Section 115.10 provides procedures which must be followed if BIA approves the application of an individual's IIM account funds against a delinquent debt. These procedures include notice of the restriction placed upon the IIM account, an opportunity for a hearing, and a right of appeal. Section 115.10(d) states that "[n]o money * * * shall be paid from an [IIM] Account or applied against a delinquent claim * * * until the decision has

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3/ Because section 410 allows funds derived from trust property to be used for the payment of debts, with the approval and consent of the Secretary, the Board could not accept appellant's argument that "[income derived from [trust] land, then, is subject to the same protection as the land." Cf. 25 U.S.C. § 354 (1988): "No lands acquired under the provisions of [the General Allotment Act] shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor."

become final in accordance with the appeal procedures provided for in § 115.14." 4/ Section 115.14 provides that appeals are taken under the appeal procedures set forth in 25 CFR Part 2.

Appellant was informed by certified mail, return-receipt requested, on March 5, 1987, that a hold had been placed on his IIM account in the amount of $2,480.40 for alleged delinquent lease rentals on the two tribal allotments. Appellant received the letter on March 9, 1987, as shown by his signature on the return receipt. The letter informed appellant of his right to request a hearing and stated that "[t]he request for a hearing must be in writing and must be received by this office within 30 days of your receipt of this notice of proposed action. A copy of the rights to a hearing are attached for your review." There is no indication in either the administrative record or in appellant's subsequent filings that he requested a hearing. Instead, the record contains only a July 29, 1987, memorandum from the Superintendent to the Agency IIM Branch authorizing "a hold on the IIM account of [appellant] for $2,480.40 to pay the proper owner of Allotment 907A and 704A for Lease [No.] 18023-85 and Lease No. 18031-85."

[1] The arguments appellant raises in this appeal relate to matters arising prior to 1987. He had the opportunity in 1987, after being notified that a hold had been placed on his IIM account, to request a hearing at which he could have raised each and every argument that he now makes. Section 115.9(b) provides in pertinent part: "If the individual fails to request a hearing, the individual is deemed to consent to the continued limitation on and/or disbursement of funds from the IIM Account in accordance with the terms of the notice."

BIA properly informed appellant of the hold on his IIM account at the time it was initiated. It properly advised him of his right to request a hearing. By failing to request a hearing at that time, appellant waived his right to one, and was deemed to have consented to the restriction on and disbursement from his IIM account. The decision that $2,480.40 from appellant's IIM account should be transferred to the Tribe to pay delinquent lease rentals has been final for the Department since 1987. The present appeal is, in essence, an untimely appeal from the 1987 notification of a claim against appellant's IIM account and/or the 1984 payment for the 1980 rental. 5/

4/ Section 115.10 was extensively amended in 1986, following the decision in Kennerly v. United States, 721 F.2d 1252 (9th Cir. 1983), which held that BIA had violated Kennerly's due process rights by withdrawing funds from his IIM account to pay debts allegedly owed to his tribe without affording him any opportunity for a hearing at which the validity of the debt could be determined.

5/ Were the Board to address the merits of appellant's case, it would affirm the Area Director. The administrative record shows notice to appellant of a failure to pay 1980 rentals on Lease No. 17151-82 on June 27, 1980. It also shows notice of the failure to pay 1981 rentals on the same lease on Jan. 28, 1981, with payment on Mar. 23, 1981; and notice of the

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Aberdeen Area Director's October 19, 1992, decision is dismissed as untimely.

Kathryn A. Lynn
Chief Administrative Judge

I concur:

Anita Vogt
Administrative Judge

fn. 5 (continued)
failure to pay 1982 rentals on Apr. 8, 1982, with payment on Apr. 22, 1982. The journal voucher for the Nov. 20, 1980, payment of $1,500 which appellant cites in his notice of appeal shows that the payment was for Lease No. 17223-81, not Lease No. 17151-82. Similarly, appellant's special deposit account ledger indicates that the payment was for Allotments 1831 and 1833, not Allotments T704A and T907A. There is no evidence of any payment of the 1980 rental for Lease No. 17151-82. Appellant has not presented any evidence disputing these entries or otherwise tending to show that entries are missing or incomplete. Further, as indicated in footnote 1, the administrative record also shows that, prior to the Mar. 5, 1987, notice of the claim against appellant's IIM account, several notices of non-payment and demands for payment had been sent to appellant concerning the 1983, 1984, and 1985 rentals on Lease Nos. 18023-85 and 18031-85. And, as in the case of the 1980 rental for Lease No. 17152-82, there is no evidence of payment of these rentals. Appellant bears the burden of proving the error of the Area Director's decision. See, e.g. Jerome v. Acting Aberdeen Area Director, 23 IBIA 137 (1993). There is no basis for concluding that the 1984 payment was improperly applied to the delinquent 1980 rental or that the 1987 hold was improperly placed on appellant's IIM account.